Supreme Court, U.S.
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No. 97-1048

In the

Supreme Court of the United States

October Term, 1997

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Minneapolis Branch on behalf of themselves and all others similarly situated; BRYSTON HILL, by His Next Friend Lisa Hill; SOPHIE KRAHNKE, by Her Next Friends Steven Krahnke and Jane McLeod; MIQUEL MCELROY, by His Next Friend Annie Pearl McElroy; GREGORY MCFARLAND, by his Next Friend Linda McFarland; SOLVEIG MEBUST and ANNA MEBUST, by their Next Friends Bruce Lynn Mebust and Kirsten Ann Scribner Mebust; DIAMOND PORTER, by His Next Friend Jamie Porter,

Petitioners,

v.

METROPOLITAN COUNCIL,
a Public Body Corporate and Politic,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the All Writs Act authorize removal of an action when necessary in aid of a federal court's jurisdiction to protect the integrity of a prior federal consent decree?

2. The second question presented by petitioners -- whether the artful pleading doctrine authorizes removal of claims which are artfully pleaded as state claims to evade federal jurisdiction and which are precluded by a prior federal judgment on a question of federal law -- does not raise an issue addressed by the court of appeals and, thus, is not appropriate for review.

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Respondent Metropolitan Council opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered on September 17, 1997.

STATEMENT OF THE CASE

The relevant background of this case is set forth in detail in the court of appeals' decision, National Association For The Advancement of Colored People, Minneapolis Branch v. Metropolitan Council, 125 F.3d. 1171 (8th Cir. 1997) (Petition Appendix ("Pet. App.") A). The following facts are provided to correct inaccuracies and omissions in Petitioners' Statement Of The Case.

Defendant-Respondent Metropolitan Council removed and successfully moved to dismiss this lawsuit, NAACP et al. v. Metropolitan Council, because Plaintiffs-Petitioners Minneapolis Branch of the NAACP attempted to relitigate claims against the Metropolitan Council which were settled by the NAACP and others, and which are subject to the ongoing jurisdiction of the federal court in Hollman v. Cisneros, Civ. No. 4-92-712 (U.S. Dist. Ct., Dist. Minn., Fourth Div.).

A. The Hollman Litigation

In 1992, the Minneapolis Branch of the NAACP and a class of low-income minority families sued several federal and local agencies and governments, alleging, among other things, that the defendants segregated minority public housing tenants by causing a large portion of Minneapolis family public housing to be sited in minority- or poverty-concentrated neighborhoods.[1] Pet. App. B-64-67. The plaintiffs added the

[1] The class that was certified was comprised of minority families and individuals who are current participants in the Minneapolis Public Housing Authority ("MPHA") Section 8 Certificate/Voucher Program, eligible

Metropolitan Council as a defendant in 1994, contending that alleged segregation in Minneapolis public housing was the product of metropolitan area-wide exclusionary housing policies for which the Metropolitan Council partly was responsible. The Hollman plaintiffs alleged:

> 76. At the same time that the Met Council has stopped holding suburban communities accountable for low income housing development, the Council has accelerated the polarization of the metro area by income and race by repeatedly approving funding for infrastructure expenditures such as sewer extensions, roads, and schools in many of the same suburban communities that have the least low income housing and the most exclusionary housing policies.
>
> 77. Had the Council enforced its own rules in the last decade, suburban low income housing opportunities would be significantly greater today. Application of Policy 39 to all funding applications by suburban communities would have compelled them to facilitate the production of low and moderate income housing . . . .

Pet. App. B-93-94 (emphasis added). These "actions and inactions" the Hollman plaintiffs concluded, "have perpetuated and entrenched patterns of residential racial segregation in the metro area. . . ." Pet. App. B-95-96.

The Hollman litigation was settled in April 1995. The settlement was memorialized in a consent decree issued by the federal district court. The decree sets out numerous complex

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persons on the waiting list for Section 8, persons residing in family public housing units owned by the MPHA, and eligible persons on the waiting list for public housing owned by the MPHA. Pet. App. B-170-172.

obligations and specific commitments of the Metropolitan Council to help further the deconcentration of racially concentrated housing in Minneapolis, and provides that the defendants will provide in excess of $100 million in federal and local resources toward that end. See, generally, Pet. App. B-120-190.

All parties to the Hollman decree, including the NAACP, mutually released and discharged all claims, known and unknown, under federal, state or common law which could have been asserted in Hollman and which arise out of any matters alleged in Hollman. Pet. App. B-169. The district court expressly retained jurisdiction to issue "such further orders as may be necessary or appropriate for the enforcement" of the decree. Pet. App. B-175-176. The decree terminates in April 2002. Pet. App. B-176.

B. The NAACP Litigation

Plaintiffs-petitioners Minneapolis Branch of the NAACP and individuals purporting to represent a class of Minneapolis school children (collectively "NAACP") commenced this action in Hennepin County District Court, State of Minnesota, on September 19, 1995, against the State of Minnesota, the governor and other state officials (collectively "state defendants"), and the Metropolitan Council. On its face, the Complaint purported to invoke only Minnesota state law. The NAACP plaintiffs claimed, in part, that the Minneapolis public schools are unlawfully segregated because of housing segregation allegedly caused by the Metropolitan Council's housing and related policies and practices:

> (d) Defendants have adopted, implemented, and permitted policies and practices that result in housing segregated by race and socioeconomic status in metropolitan area, and thereby result in segregation

by race and socioeconomic status in the Minneapolis public schools.

Pet. App. D-224 (emphasis added). The NAACP plaintiffs sought to permanently enjoin these policies and practices and sought an order requiring the Metropolitan Council "to remedy the violations of law." Pet. App. D-228.

C. Proceedings Below

The Metropolitan Council timely removed this case pursuant to 28 U.S.C. §§ 1441 and 1651, Pet. App. B-41-46, and moved to dismiss. The district court remanded as to all defendants except the Metropolitan Council. The district court determined that removal of claims against the Metropolitan Council was proper under 28 U.S.C. § 1441 because the claims were artfully pleaded claims virtually identical to federal claims settled and subject to the federal consent decree in Hollman. Pet. App. B-35-38; NAACP v. Minnesota, No. 3-95-968, slip op. at 3-6 (D. Minn. February 5, 1996), aff'd 125 F.3d 1171 (8th Cir. 1997). The district court also held, in the alternative, that removal was proper under the All Writs Act, 28 U.S.C. § 1651, to protect the integrity of the Hollman consent decree because "any remedy pertaining to Met[ropolitan] Council granted by the state court will necessarily overlap with the consent decree in place in Hollman . . . ." Pet. App. B-38; id. at 6.

The district court subsequently dismissed the claims against the Metropolitan Council as barred by res judicata. "Plaintiffs' allegations against Met[ropolitan] Council constitute, at their core, housing claims identical to those alleged and resolved in the earlier case of Hollman v. Cisneros." Pet. App. B-32; NAACP v. Minnesota, No. 3-95-968, slip op. at 20 (D. Minn. July 15, 1996), aff'd 125 F.3d 1171 (8th Cir. 1997).

The NAACP filed a petition for writ of mandamus seeking an order to remand this action to the Hennepin County District Court. The court of appeals denied the petition.

The court of appeals subsequently held that removal was proper under the All Writs Act because the action was not removable under the federal removal statutes and "the district court was confronted with a situation where parties subject to the district court's continuing jurisdiction under the Hollman decree . . . were resorting to a state forum to relitigate settled and released claims." Pet. App. A-6; NAACP, 125 F.3d at 1173. Because it concluded that removal was proper under the All Writs Act, the court of appeals did not determine -- contrary to the impression fostered by petitioners -- whether removal was warranted under the artful pleading doctrine. Pet. App. A-7; id. at 1174.

The court of appeals affirmed the application of res judicata and the dismissal of the claims against the Metropolitan Council. "[A]s far as the claims against the Met[ropolitan] Council are concerned, this suit and Hollman involve the same cause of action." Pet. App. A-9; id.[2]

REASONS FOR DENYING THE WRIT

A writ of certiorari is unwarranted. The court of appeals' decision that removal was proper under the All Writs Act is entirely consistent with this Court's precedents and legal principles, and does not conflict squarely with the decisions of the other courts of appeal. In addition, the court of appeals did not reach the district court's alternative ground for removal under the artful pleading doctrine. Therefore, the decision below does not raise the second question presented in the petition.

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[2] Petitioners do not challenge in this petition the application of res judicata to their claims.

I. THE COURT OF APPEALS' DECISION THAT REMOVAL WAS PROPER UNDER THE ALL WRITS ACT IS CONSISTENT WITH THIS COURT'S PRECEDENTS AND LEGAL PRINCIPLES, AND DOES NOT CONFLICT SQUARELY WITH THE DECISIONS OF THE OTHER COURTS OF APPEAL.

A. The Court Of Appeals' Decision Is Consistent With This Court's Precedents.

Contrary to petitioners' contention, the court of appeals' decision is consistent with this Court's admonitions that the All Writs Act "is a residual source of authority" and that power under the Act "is to be used sparingly." See Petitioners' Brief at 16. This Court made clear in Pennsylvania Bureau of Correction v. United States Marshals Service, 474 U.S. 34 (1985), that the All Writs Act "empowers federal courts to fashion extraordinary remedies when the need arises . . ." in situations not otherwise covered by statute. Pennsylvania Bureau of Correction, 474 U.S. at 43. In this case, the court of appeals expressly found such an extraordinary situation. "Although this class action is not removable under the federal removal statutes, the district court was confronted with a situation where parties subject to the district court's continuing jurisdiction under the Hollman decree . . . . were resorting to a state forum to relitigate settled and released claims." Pet. App. A-6; NAACP, 125 F.3d at 1173.

Similarly, to the extent that Turner Broadcasting System, Inc. v. Federal Communications Commission, 507 U.S. 1301 (1993), even applies,[3] the court of appeals observed this

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[3] Unlike this case, Turner Broadcasting System dealt with this Court's power to enjoin an act of Congress pending a decision on the merits.

Court's caution in Turner Broadcasting System that power under the All Writs Act "is to be used sparingly." Id. at 1303. The court of appeals carefully limited its ruling to the extraordinary situation described above. "Faced with this circumstance, we believe the district court was warranted in authorizing removal under the All Writs Act to protect the integrity of the federal consent decree entered in Hollman . . . ." Pet. App. A-6; NAACP, 125 F.3d at 1173.

Further, the court of appeals' decision follows logically from United States v. New York Tel. Co., 434 U.S. 159 (1977), where this Court held that the All Writs Act empowers a federal court "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." New York Tel. Co., 434 U.S. at 172. In this case, the district court properly obtained jurisdiction in Hollman and issued a decree barring relitigation of "any matters alleged" in the action. Pet. App. A-6; NAACP, 125 F.3d at 1173. The claims which petitioners asserted against the Metropolitan Council in this case were identical to the claims asserted by the NAACP and others against the Metropolitan Council in Hollman. "As against the Met[ropolitan] Council, this suit seeks what Hollman sought: to end the claimed segregative effect of the Met[ropolitan] Council's policies and practices concerning housing and related infrastructure projects in the Twin Cities' metropolitan area." Pet. App. A-9; id. at 1174; compare Pet. App. B-93-94 (¶¶ 76-77) and Pet. App. D-224 (¶ 36(d)). To permit petitioners to pursue the same claims in state court necessarily would have frustrated the Hollman relitigation bar, and any remedy that might have been granted in the state action would have interfered with the ongoing operation of the federal decree. Pet. App. B-38; NAACP v. Minnesota, No. 3-95-968, slip op. at 6 (D. Minn. February 5, 1996), aff'd 125 F.3d 1171 (8th Cir. 1997).

B. The Court of Appeals' Decision Does Not Conflict Squarely With The Decisions Of The Other Courts Of Appeal.

The court of appeals' decision is fully consistent with the decisions of the Second, Third, Sixth and Seventh Circuits, all of which recognize that the All Writs Act authorizes removal under extraordinary circumstances such as those presented in this case. See Davis v. Glanton, 107 F.3d 1044, 1047 n.4 (3rd Cir. 1997), cert. denied 118 S.Ct. 159 (1997); Matter of VMS Securities Litigation, 103 F.3d 1317, 1324 (7th Cir. 1996); Sable v. General Motors Corp., 90 F.3d 171, 175 (6th Cir. 1996); In re Agent Orange Product Liability Litigation, 996 F.2d 1425, 1431 (2nd Cir. 1993), cert. denied 114 S.Ct. 1125 (1994); Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855, 863 (2nd Cir. 1988), cert. denied 109 S.Ct. 1527 (1989).[4]

Moreover, contrary to petitioners' contention, the court of appeals' decision is not inconsistent with Westinghouse Electric Corp. v. Newman & Holtzinger, 992 F.2d 932 (9th Cir. 1993). In Westinghouse Electric Corp., the Ninth Circuit simply reiterated the well-settled principle that the All Writs Act does not operate to confer jurisdiction in the first instance; it only operates in aid of jurisdiction already obtained. Id. at 937. In this case, in contrast to Westinghouse Electric Corp., "[t]here is no dispute the district court properly obtained jurisdiction in Hollman." Pet. App. A-5; NAACP, 125 F.3d at 1173. Thus, the district court applied the All Writs Act in this

[4] Petitioners' assertion that the court of appeals' decision is somehow inconsistent with the Second Circuit's interpretation of the Act is puzzling. The court of appeals favorably cited and drew parallels to the Second Circuit cases which petitioners contend are inapposite. Pet. App. A-6-7; NAACP, 125 F.3d at 1173-74.

case in aid of jurisdiction otherwise obtained, not as an independent source of jurisdiction.[5]

C. The Court of Appeals' Decision Comports With Principles Of Federalism, And Does Not Delegate Judicial Power To Private Parties.

Contrary to petitioners' assertion, the court of appeals was sensitive to principles of federalism and comity. Faced with the choice of removal or enjoining the state court action, the court of appeals chose the least intrusive course. "[W]e think removal in this case better preserves state-federal relations than would resort to an injunction because it spares the Hennepin County District Court from expending judicial resources to no avail." Pet. App. A-7; id. at 1174; see also Yonkers Racing Corp., 858 F.2d at 864.

Petitioners' contention that the court of appeals "has deprived a class of more than 40,000 schoolchildren from litigating their state constitutional [education] claims in their state's courts," Petitioners' Brief at 20, simply is false. As the court of appeals found, the Metropolitan Council does not bear any responsibility for public education under Minnesota law. Pet. App. A-9-10; NAACP, 125 F.3d at 1175. Thus, petitioners have no state constitutional claims against the

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[5] Petitioners cite in passing, but understandably do not expound on, Hillman v. Webley, 115 F.3d 1461 (10th Cir. 1997), which is the only court of appeals decision that is marginally dissonant. Hillman held that the All Writs Act authorizes a federal district court to enjoin parties before it from pursuing conflicting litigation in state court, but does not authorize removal. Id. at 1469. Concurring only in the result, one member of the three-judge panel criticized the reasoning of the decision as being at odds with New York Telephone Co., and concluded that the All Writs Acts authorizes removal "in appropriate and narrow circumstances in aid of [a federal court's] jurisdiction." Id. at 1470 (Kelly, Jr., J., concurring in result), citing Matter of VMS Securities Litigation, supra; In re Agent Orange, supra; Yonkers Racing Corp, supra.

Metropolitan Council. Further, petitioners' claims against the state defendants, which the district court remanded, currently are proceeding in state court.

Finally, petitioners do not cite any case in support of their make-weight argument that the courts improperly delegated judicial authority because the courts "merely denied petitioners' motion to remand" and did not affirmatively issue a "writ" ordering removal. See Petitioners' Brief at 17-18. The All Writs Act is not so literally and narrowly construed. As this Court stated in New York Telephone Co., the Act empowers a federal court "to issue such commands . . . as may be necessary or appropriate . . . ." New York Telephone Co., 434 U.S. at 172. Obviously, an order denying a motion to remand and hence effectuating removal is such a command. See, e.g., In re Agent Orange, 996 F.2d at 1430-31. In any event, even if this issue were resolved in petitioners' favor, it would not affect the outcome. It is clear from the decisions that both the district court and the court of appeals determined that removal under the All Writs Act, whether directly or indirectly ordered, was appropriate.

II. THE DECISION BELOW DOES NOT RAISE A QUESTION APPROPRIATE FOR REVIEW REGARDING THE ARTFUL PLEADING DOCTRINE.

Petitioners' second question presents the issue of whether the artful pleading doctrine, as articulated in Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394 (1981), authorizes removal in this case. However, the decision below does not raise the issue presented.

Although the district court held, in the alternative, that removal was proper under the artful pleading doctrine, the court of appeals did not. "Because we conclude removal was proper under the All Writs Act, we need not determine

whether removal was also warranted under the artful pleading doctrine." Pet. App. A-7; NAACP, 125 F.3d at 1174.

In essence, petitioners are attempting a direct appeal from the decision of the district court to this Court. Direct appeals are restricted to situations prescribed by statute. See Bailey v. Patterson, 369 U.S. 31, 34 (1962). This case does not fall within the limited types of suits in which direct appeals are permitted. Therefore, in the absence of a ruling of the court of appeals regarding removal under the artful pleading doctrine, no reason exists for the grant of certiorari.[6]

[6] Petitioners' second question, improperly presented, is similar to the question presented in Rivet v. Regions Bank of Louisiana, F.S.B., 108 F.3d 576 (5th Cir. 1997), cert. granted 118 S.Ct. 31 (1997). However, even if petitioners' second question were properly before this Court, there would no reason to postpone consideration of this petition pending resolution of issues in Rivet because there is in this case independent ground for removal under the All Writs Act.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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